
I. INTRODUCTION

MedStar proposes to relocate a freestanding ambulatory surgical facility, the temporarily delicensed SurgiCenter of Pasadena, in Anne Arundel County, to the planned MedStar Brandywine Health Center, an outpatient facility to be located at the intersection of Brandywine Road and Mattawoman Drive in Prince George's County.

In a letter dated October 11, 2013, MedStar notified the Commission of its intent to request an exemption from the CON review process for the relocation of this surgical facility, in accordance with COMAR 10.24.01.04A(2).

MedStar has defined the ASF portion of the MedStar Brandywine Health Center project as an ASF with two operating rooms, one minor procedure room, 14 pre- and post-operative bays, and a central processing area. The health center will also include physician offices and

exam rooms, space for diagnostic imaging (computed tomography and magnetic resonance imaging, and bone densitometry), outpatient rehabilitation services, and blood drawing.

CON regulations require that notice of intent to seek exemption from CON review be filed at least 45 days before the intended action. The regulations also require the Commission to publish notice of the requested exemption in order to solicit comments and relevant information from the affected public, as part of the process of evaluating whether the action proposed for exemption is in the public interest.

The regulations direct the Commission to issue a determination of exemption from CON review, if the system has provided the required information and the Commission finds that the proposed action:

- (a) is in the public interest;
- (b) is not inconsistent with the State Health Plan (SHP); and
- (c) will result in more efficient and effective delivery of health services.

II. Legal Qualification for an Exemption of Certificate of Need Review

The regulations require that facilities or organizations requesting such an exemption give the Commission 45 days written notice. MedStar notified the Commission in a letter dated October 11, 2013, of its intent to request exemption from the CON process. On November 8, 2013, MedStar provided Commission staff with preliminary information to begin evaluation their request. These communications met the required 45 days notice. MedStar submitted additional information to the Commission on April 3, April 30, May 5, and May 6 of 2014.

III. Notice by the Commission to the Public

Notices of receipt of the request for the exemption were published in the Washington Times on November 21, 2013; The Baltimore Sun on November 25, 2013; and the Maryland Gazette on November 30, 2013. Notice was also published in the Maryland Register on December 7, 2013. No comments or relevant information were received in response to these notices.

III. Public Information Hearing

A public information hearing is required under certain circumstances when a hospital requests an exemption from CON review for the closure or partial closure of a hospital or for the conversion of a hospital to a limited service hospital. Because the current request involves the relocation of an ambulatory surgical facility that is part of a merged asset system, a public information hearing was not required.

IV. Determination of Exemption from Certificate of Need Review

The controlling regulation in this review is COMAR 10.24.01.04 A(2), which allows the relocation of an existing health care facility, owned or controlled by a merged asset system, to be exempted from Certificate of Need Review if:

- The relocation is to a site outside the primary service area of the health care facility to be relocated but within the primary service area of the merged asset system; and
- The relocation of the existing health care facility does not:
 - Change the type or scope of health care services offered; and
 - Does not require a capital expenditure for its construction that exceeds the capital review threshold

In this case, the proposed relocation of the ASF is to a location outside of the primary service area of the SurgiCenter of Pasadena, but within the primary service area of MedStar Southern Maryland Hospital Center, a MedStar Health System hospital. The relocation does not change the type or scope of health services offered.

The ASF is estimated to cost \$5,347,000. This amount is within the current CON threshold for this category of "health care facility," which is currently \$5,900,000. MedStar stated that the cost estimate was prepared by "third party individuals who possess extensive healthcare design and construction experience from the Trammel Crow Company (project management), Trinity Health Group (architects), and Chesapeake Construction."

The regulations direct the Commission to issue a determination of exemption from CON review, if the merged asset system has provided the required information and the Commission finds that the proposed action:

- (a) is in the public interest;
- (b) is not inconsistent with the State Health Plan; and
- (c) will result in more efficient and effective delivery of health services.

A. The Public Interest

MedStar has posited a number of reasons that the proposed ASF is in the public interest. It argues that the ASF setting offers the potential for lower costs than would be experienced in hospital-based ambulatory surgery, because of lower overhead costs and less uncompensated care, and also describes this setting has more convenient and less stressful for patients than the general hospital campus, a view supported by the literature. It also believes that having this type of multi-specialty ASF available in southern Prince George's County will facilitate MedStar's ability to increase the number of surgical specialists available locally in this market.

There is no question that, historically, in Maryland, payors pay substantially less for most outpatient surgical procedures when they are performed at an ASF rather than a general hospital.

The comparable alternative ASF settings in southern Prince George's County are limited. There is only one multi-specialty ASF operating in the area, the SurgiCenter of Southern

Maryland, located in Clinton, which reports providing gastroenterological procedures, orthopaedic procedures, ophthalmic surgery, and pain management procedures. It operates a single operating room at a reported high-level of capacity use (over 1,900 operating room hours in 2012, well above optimal capacity for an FASF operating room).

Commission staff finds that the proposed project can be reasonably viewed as one that promotes the public interest in providing a lower cost and more convenient setting for outpatient surgical patients in MedStar's newest hospital service area. MedStar acquired Southern Maryland Hospital Center in Clinton in December of 2012. This hospital, now operated as MedStar Southern Maryland Hospital Center (MSMHC), is 5 miles from the proposed ASF site. MedStar does not operate a hospital in Anne Arundel County, where the SurgiCenter of Pasadena was located.

B. Consistency with the State Health Plan or an institution-specific plan developed by the Commission

Commission staff's review of this request for exemption from CON review identifies one substantive concern. This is the projected use of overall MedStar operating room capacity in this market. The State Health Plan need standard focuses on need for operating room capacity at an institutional level and is designed to promote development or replacement of operating room capacity only when it can be demonstrated that this capacity is likely to be, at a minimum, "optimally" used. Optimal use is defined as 1,632 hours per year per room in the case of ASFs and 1,900 hours per year per room for mixed-use (i.e., available for both inpatient and outpatient surgery) general purpose rooms in the general hospital setting.

MedStar currently operates 10 mixed-use, general purpose operating rooms at MedStar Southern Maryland Hospital Center. Those rooms are not optimally utilized. In fiscal year (FY) 2014, MedStar projects that these 10 operating rooms will be used at an average of only 1,164 hours per room, or 61% of optimal capacity.¹ MedStar also reports that inpatient surgery case volume at this hospital has declined by 23% from FY 2009 to FY 2014 (projected) and outpatient surgery case volume has declined by 10% over this same period.

As noted, this hospital was acquired by MedStar just 17 months ago and a CON application to expand and renovate this hospital that is currently in review by MHCC projects an ability to greatly expand the surgical case volume handled by this hospital. MedStar projects a 120% increase in inpatient surgery case volume at the hospital and a 16% increase in outpatient case volume at the hospital between FY 2014 and FY 2020. On top of this large reversal of recent trends at the hospital, it also projects the ability to generate demand for 1,400 surgery cases at the Brandywine ASF in its first year of operation, 2015, with case volume increasing to 1,553 cases by 2019. From a market perspective, this can be viewed as a projected increase of 53% in outpatient surgery cases handled by MedStar facilities in the southern Prince George's County region between FY 2014 and FY 2019. MedStar is portraying a market in which it will be able to attract a much greater use of its existing surgical facility, the hospital, by more surgical specialists and a wider variety of surgical specialists, primarily for inpatient surgery, over the

¹ Information filed by MedStar Southern Maryland Hospital Center as part of CON Matter No. 13-16-2350, an undocketed CON application currently in review.

next few years while simultaneously boosting outpatient surgery case levels as well, with most of the growth occurring in the new Brandywine venue. The new facilities it proposes are identified as an important basis for success in this marketing endeavor. In addition to establishing a new ASF in Brandywine, MedStar is also proposing replacement of six of its ten hospital operating rooms in Clinton, with larger state-of-the-art rooms, as part of the CON application in review. It proposes to keep all ten of its existing hospital rooms in operation.

Some portion of this major increase in demand for surgical facilities projected by MedStar represents a shift in demand from Washington Hospital Center, a MedStar hospital in the District of Columbia that has significant market share in Prince George's County.

Staff finds that MedStar can realistically project the ability to utilize the two operating rooms proposed for the Brandywine ASF on the basis that it currently operates a hospital approximately five miles north of the ASF site that reports performance of over 4,000 outpatient surgery cases in FY 2013. Shifting a portion of this demand to the Brandywine facility would provide acceptable use of that facility's two operating rooms and could accommodate this volume at a lower cost. In this sense, the exemption request can be viewed as consistent with the State Health Plan.

However, this clearly leaves questions with regard to the larger hospital project that MedStar has proposed in southern Prince George's County and the need for the operating room inventory at the hospital that it proposes keeping in place and modernizing. Staff finds that the cost advantages of shifting outpatient surgery case volume away from the hospital setting provides an acceptable basis for concluding that MedStar has the ability to well utilize this new ASF and the project is consistent with the State Health Plan, in this sense. The greater level of difficulty this presents to MedStar in justifying its surgical facility plans at the hospital are a consequence of this finding and recommendation. MedStar should attempt to address this consequence and, based on information reviewed by Staff to date, this should include some reconsideration of its hospital expansion and renovation plan. We believe that approval of this exemption request has an impact on the decision that the Commission will need to make in the future on the hospital proposal under review. However, at this time, it is reasonable to allow MedStar to go forward with creation of this alternative surgical venue in its new hospital market, even if this requires changes in its hospital surgical facility plans.

MedStar has provided an acceptable demonstration that this exemption request is not inconsistent with the balance of the applicable general and project review standards of COMAR 10.24.11., the State Health Plan for general surgical services. Staff recommends a finding that this exemption request is not inconsistent with the SHP.

C. The delivery of more efficient and effective health care services

As described in the "Public Interest" section above, staff finds that the proposed ASF offers a high likelihood of lower costs for surgical patients, in a setting that is more convenient (and more accessible for some residents of Prince George's County), in a market area where a MedStar general hospital is the dominant setting for outpatient surgery. The ASF will anchor a larger project that will bring additional outpatient services to this southern Prince George's

County market and will enhance MedStar's ability to recruit skilled health care providers to the locality. As noted in the "SHP" section above, it does raise issues with respect to the ultimate efficiency of the overall inventory and configuration of surgical facilities that MedStar has projected for this area. This will be addressed in a future decision on the hospital expansion and renovation project currently under review.

V. CONCLUSION AND STAFF RECOMMENDATION

MedStar has met the requirements for approval of a CON exemption for this facility relocation. Staff recommends that the Commission **APPROVE** the request from MedStar for exemption from CON review to relocate the SurgiCenter of Pasadena to the planned MedStar Brandywine Health Center and replace it with a smaller, two operating room facility.